

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

STEVEN WATERBURY,  
Plaintiff,  
v.  
TRIANGLE CONSTRUCTION, INC.,  
Defendant.

Case No.: 16cv1946-JLS (DHB)

**NOTICE AND ORDER FOR EARLY  
NEUTRAL EVALUATION  
CONFERENCE**

IT IS HEREBY ORDERED that an Early Neutral Evaluation Conference will be held on **October 17, 2016** at **10:00 a.m.** in the chambers of the Honorable David H. Bartick, United States Magistrate Judge, U.S. Courthouse, 333 West Broadway, Suite 1080, San Diego, California.

Pursuant to Rule 16.1(c) of the Local Rules of the United States District Court for the Southern District of California, **all named parties, all counsel, and any other person(s) whose authority is required to negotiate and enter into settlement shall appear in person at the conference**, shall be prepared to discuss the claims and defenses, and shall be legally and factually prepared to discuss and resolve the case at the Early Neutral Evaluation Conference. The individual(s) present at the Early Neutral Evaluation Conference with settlement authority must have the unfettered discretion and authority on behalf of the party to: (1) fully explore all settlement options and to agree during the Early

1 Neutral Evaluation Conference to any settlement terms acceptable to the party (*G.*  
 2 *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648, 653 (7th Cir. 1989)), (2)  
 3 change the settlement position of a party during the course of the Early Neutral Evaluation  
 4 Conference (*Pitman v. Brinker Int'l, Inc.*, 216 F.R.D. 481, 485-86 (D. Ariz. 2003)), and (3)  
 5 negotiate a settlement without being restricted by any predetermined level of authority  
 6 (*Nick v. Morgan's Foods, Inc.*, 270 F.3d 590, 596 (8th Cir. 2001)).

7 Governmental entities may appear through litigation counsel only. As to all other  
 8 parties, appearance by litigation counsel only is not acceptable. Retained outside corporate  
 9 counsel shall not appear on behalf of a corporation as the party who has the authority to  
 10 negotiate and enter into a settlement. **The failure of any counsel, party or authorized**  
 11 **person to appear at the Early Neutral Evaluation Conference as required will be**  
 12 **cause for the imposition of sanctions.**

13 All conference discussions will be informal, off the record, privileged, and  
 14 confidential.

15 Counsel for any non-English speaking parties is responsible for arranging for the  
 16 appearance of an interpreter at the conference.

17 **At least five (5) court days prior to the ENE**, the parties shall submit confidential  
 18 ENE Statements directly to Judge Bartick's chambers. **The statements shall be no longer**  
 19 **than five (5) pages in length.** The ENE Statements shall outline the nature of the case,  
 20 the claims, the defenses, and the parties' positions regarding settlement of the case. The  
 21 ENE Statements should be e-mailed to: **efile\_Bartick@casd.uscourts.gov**.

22 Rule 26 of the Federal Rules of Civil Procedure shall apply to this case. All  
 23 discovery shall be stayed until after the Rule 26(f) conference, unless otherwise permitted  
 24 by Rule 26(d)(1).

25 In the event the case does not settle at the Early Neutral Evaluation Conference, the  
 26 parties shall also be prepared to discuss the following matters at the conclusion of the  
 27 conference:

- 28 1. Any anticipated objections under Federal Rule of Civil Procedure 26(a)(1) to

1 the initial disclosure provisions of Rule 26(a)(1)(A-E);

2 2. The scheduling of the Rule 26(f) conference;

3 3. The date of initial disclosures and the date for lodging the discovery plan  
4 following the Rule 26(f) conference; and

5 4. The scheduling of a Case Management Conference pursuant to Rule 16(b).

6 Plaintiff's(s') counsel shall give notice of the Early Neutral Evaluation Conference  
7 to parties responding to the complaint after the date of this notice.

8 Early Neutral Evaluation Conferences will be rescheduled only upon a showing of  
9 good cause and adequate notice to the Court. If counsel wish to reschedule this conference,  
10 counsel for all parties shall jointly contact the Court. The Court reminds counsel and  
11 parties that conferences held beyond 45 days of the filing of an answer are contrary to Rule  
12 16.1(c) of the Civil Local Rules, and are seriously disfavored by the Court.

13 Questions regarding this case may be directed to Judge Bartick's law clerk at (619)  
14 557-5383.<sup>1</sup>

15 IT IS SO ORDERED.

16 Dated: August 22, 2016

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18 DAVID H. BARTICK  
19 United States Magistrate Judge  
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28 <sup>1</sup> Judge Bartick's Chambers Rules are posted on the Court's website: [www.casd.uscourts.gov](http://www.casd.uscourts.gov).



*United States District Court  
Southern District Of California  
U.S. Courthouse Annex  
333 West Broadway, Suite 1080  
San Diego, California 92101*

*David H. Bartick  
United States Magistrate Judge*

*(619) 557-5383  
Facsimile: (619) 702-9925*

**NOTICE OF RIGHT TO CONSENT TO TRIAL  
BEFORE A UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. § 636(c), you are hereby notified that a U.S. Magistrate Judge of this District may, upon the consent of all parties on form 1a (available in the clerk's office), conduct any or all proceedings, including a jury or non-jury trial, and order the entry of a final judgment. Counsel for the plaintiff shall be responsible for obtaining the consent of all parties, should they desire to consent. If both parties consent, the executed consent form (signed by all parties) should be submitted to the Clerk of Court.

You should be aware that your decision to consent or not to consent is entirely voluntary and should be communicated solely to the Clerk of Court. Only if all parties consent will the Judge or Magistrate Judge to whom the case has been assigned be informed of your decision.

Judgments of the U.S. Magistrate Judges are appealable only to the U.S. Court of Appeals in accordance with this statute and the Federal Rules of Appellate Procedure.